

State of California
Regional Water Quality Control Board
San Diego Region

REVISED: EXECUTIVE OFFICER SUMMARY REPORT
December 11, 2002

- ITEM: 5
- SUBJECT: TENTATIVE ORDER NO. R9-2002-0342, WASTE DISCHARGE REQUIREMENTS FOR THE DISPOSAL AND/OR REUSE OF PETROLEUM FUEL CONTAMINATED SOILS (FCS) IN THE SAN DIEGO REGION (Brian McDaniel)
- PURPOSE: Consider adoption of tentative Order No. R9-2002-0342 establishing General Waste Discharge Requirements for the disposal and/or reuse of petroleum hydrocarbon fuel contaminated soils as engineered fill within the San Diego Region.
- PUBLIC NOTICE: A Public Notice of this agenda item was published in the San Diego Union-Tribune on October 29, 2002 (Attachment 5). In addition, a notice was added to the Notification Section of the Regional Board agenda for the November 13, 2002 meeting.
- These actions serve as the 45-day public notification of this agenda item, as required by CCR Title 27 Section 21730 (b).
- DISCUSSION: On May 16, 1995, the California Regional Water Quality Control Board, San Diego Region (Regional Board) adopted Resolution No. 95-63, A Resolution Conditionally Waiving Adoption of Waste Discharge Requirements for Disposal/Reuse of petroleum Hydrocarbon Fuel Contaminated Soils.
- On October 10, 1999, Senate Bill 390 (Alpert) amended Water Code Section 13269. As a result, all of the Regional Board's current waivers will expire on January 1, 2003 absent Board action to renew them. In order to retain the existing waivers, WC Section 13269 requires each regional board to:
- Review the terms, conditions and effectiveness of each type of waiver included in their waiver policies;
 - Renew waiver policies and all waivers for specific discharges by January 1, 2003 (failure to renew a waiver automatically results in termination);
 - Establish waiver conditions;

- Enforce waiver conditions;
- Renew waivers every five years; or
- Determine if general or individual waste discharge requirements should be issued for ongoing discharges where waivers have been terminated.

The amendment to Water Code Section 13269 affects Resolution No. 95-63: "A Resolution Conditionally Waiving Adoption of Waste Discharge Requirements for Disposal/Reuse of Petroleum Hydrocarbon Fuel Contaminated Soils (FCS)."

Pursuant to the recent amendments to WC Section 13269, the current Waiver Policy and types of discharges (waivers) included in the Policy has been reviewed. One result of that review is tentative Order No. R9-2002-0342 (Attachment 1), tentative Monitoring and Reporting Program (MRP) R9-2002-0342 (Attachment 2), and the FCS Waste Certification form (Attachment 3). The General Waste Discharge Requirements and MRP in Tentative Order R9-2002-0342 are intended to replace Resolution No. 95-63 and addenda thereto. The supporting rationale is provided in the Staff Report (Attachment 4).

On November 27, 2002, the Regional Board received written comments from Mr. Stephen Beck (Ninyo and Moore) (Attachment 9). The Regional Board staff responses to Mr. Beck's comments and concerns are provided in Attachment 10. Errata to the original tentative Order are included in Attachment 11.

LEGAL CONCERNS:

Tentative Order R9-2002-0342 relies upon the CEQA documents certified by the Regional Board on November 15, 1993 (Attachment 6). The Regional Board adopted (Resolution No. 93-103) a Negative Declaration on November 15, 1993 (Attachment 8), for three types of discharges, including the disposal and reuse of petroleum hydrocarbon fuel contaminated soils. The Negative Declaration was adopted in support of Addenda Nos. 1, 2, and 3 to Resolution No. 83-21. The Regional Board determined that there would be no significant adverse water quality impacts in accordance with the provisions of the California Environmental Quality Act.

Both Addendum No. 2 to Resolution 83-21 (Attachment 7) and tentative Order R9-2002-0342 are functionally equivalent because they both contain restrictions on how fuel contaminated soils may be reused/discharged and concentration limits of petroleum

hydrocarbon constituents for reuse/disposal of fuel contaminated soils/wastes. Although the “project” defined for purposes of CEQA remains the same, tentative Order R9-2002-0342 is more restrictive than Addendum No. 2 to Resolution 83-21. As a result, discharges regulated pursuant to tentative Order R9-2002-0342 will result in a lower potential threat to water quality than what was previously allowed under the waiver conditions included in Addendum No. 2 to Resolution No. 83-21.

**SUPPORTING
DOCUMENTS:**

- Attachment 1: Tentative Order No. R9-2002-0342
- Attachment 2: Tentative Monitoring and Reporting Program R9-2002-0342
- Attachment 3: FCS Certification Form
- Attachment 4: Regional Board Staff Report for Item 5
- Attachment 5: Public Notice of Agenda Item
- Attachment 6: CEQA Compliance: Resolution No. 93-103: A Resolution Adopting a Negative Declaration for Addenda Nos.1, 2, and 3 to Resolution No. 83-21
- Attachment 7: Agenda Package for Adoption of Addendum No. 2 to Resolution No. 83-21
- Attachment 8: Minutes of Regional Board Meeting on November 15, 1993, Item 5: Adoption of Resolution No. 93-103, A Resolution Adopting A Negative Declaration for Addenda Nos. 1, 2, And 3 To Resolution No. 83-21
- Attachment 9: Public Comments Received on tentative Order No. R9-2002-0342
- Attachment 10: Staff Responses to Public Comments on tentative Order No. R9-2002-0342
- Attachment 11: ERRATA for tentative Order No. R9-2002-0342

**SIGNIFICANT
CHANGES:**

Tentative Order R9-2002-0342 contains General Waste Discharge Requirements for Disposal/Reuse of Fuel Contaminated Soils (FCS) wastes within the San Diego Region. This represents a significant administrative change from the use of conditional waivers (Resolution Nos. 83-21 and 95-63) as was done in the past. The change to General WDRs was made after considering the recent amendment to WC Section 13269, reviewing applicable requirements (*e.g.*, from applicable regulations in CCR Title 27 and storm water requirements), and considering our lessons learned from administration of the previous conditional waiver policies on re-use/disposal of FCS wastes.

The tentative Order adds a number of revised technical requirements, in addition to those previously contained in the conditional waivers. The tentative Order requires that dischargers implement best management practices (BMPs) to control the effects of erosion and storm water discharges, waste pile management controls (if applicable), and submit a technical report to the Regional Board concerning the final disposition of FCS wastes at the site. The tentative Order adds primary and secondary concentration limits for MTBE and removes the volume limitation of 5,000 cubic yards, previously established in the conditional waiver – Resolution No. 95-63.

The tentative Order requires that dischargers to apply for coverage under the General WDRs by submitting a Report of Waste Discharge, an FCS Certification Form (and supporting documentation), and paying a filing fee payable to the State Water Resources Control Board.

RECOMMENDATION: Regional Board staff recommends adoption of tentative Order R9-2002-0342.